

Appl. No. : 10/614,650
Filed : July 7, 2003

REMARKS

In response to the Office Action transmitted June 19, 2008, in further response to the Advisory Action transmitted November 11, 2008, and in conjunction with the Request for Continued Examination filed herewith, please reconsider the above-captioned application in light of the above amendments and the following remarks.

Amendment to Claim 21 Does Not Add New Matter

In the Advisory Action the Examiner indicated that Applicants' amendment to Claim 21, which, *inter alia*, recites that the wound cover member is wholly disconnected from the device, raises the issue of new matter. Applicants respectfully contend that the amendments to Claim 21 are supported by the disclosure as initially filed, and no new matter has been added. Specifically, paragraphs [0037]-[0050], in conjunction with Figures 3-7, discuss an embodiment in which a patch is wholly disconnected from a patch applicator. Since the specification and drawings as originally-filed support the limitations added to Claim 21, Applicants assert that no new matter has been added by such amendments.

Claims Are Patentable Over Barak Reference

The Examiner rejected the claims under 35 U.S.C. § 102(b) or 35 U.S.C. § 103(a) in light of U.S. Pat. No. 6,048,358 to Barak. Claim 21 has been amended to clarify certain structure, and currently defines over Barak.

Barak teaches a catheter device utilizing a series of balloons to promote hemostasis of an arterial wound. An interior balloon 48, when inflated, abuts against the forward end 21 of a catheter introducer 10 (see col. 5, ll. 32-33; Fig. 6). This assembly is drawn back until the anchor balloon 48 lies against an inner wall surface 60 of a wall 62 of the artery 12 (see col. 5, ll. 37-40; Fig. 7). In the Office Action, the Examiner has taken the position that the balloon 48 is acting as a wound cover – albeit on the INSIDE surface of the artery.

After the anchor balloon 48 is in position, balloon 20 is deployed adjacent the outer wall 64 of the artery (see col. 5, ll. 41-47; Fig. 8). Eventually the anchor balloon 48 is deflated and removed (see col. 5, ll. 64-67; Fig. 9). Notably, the anchor balloon 48 never engages the outer surface of the artery, nor is it retained adjacent the wound.

Claim 21 has been amended to clarify the relationship of the wound cover member and elongate body upon release of the wound cover member. For example, Claim 21 recites a device

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for at least partially closing an opening in tissue, comprising, *inter alia*, an elongate body comprising a first lumen having a first distal opening, a wound cover member releasably connected to the elongate body at the first distal opening, and the wound cover member and the elongate body are configured so that when the wound cover member is released from the first distal opening of the elongate body at or adjacent an opening in tissue, the wound cover member is wholly disconnected from the device.

Barak is much different structurally than the device recited in Claim 21, and is thus structurally unable to attain the recited configuration. For example, when the balloon 48 separates from the forward end 21 of the introducer 10 in order to engage the INNER wall of the artery (see Figs. 6-7), the balloon 48 remains connected as part of the overall catheter device. It is not until after the balloon 48 is removed from engagement with the inner wall and removed from the patient's body that the balloon is wholly disconnected from the rest of the catheter device. As such, Barak is incapable of achieving the recited configuration.

Since Barak does not teach or suggest all of the limitations of amended claim 21, Applicants respectfully request that the Examiner withdraw the rejection of this claim and the claims that depend therefrom.

Claims 10, 22, 24 and 34-41 depend from Claim 1, but also stand rejected over Barak. Applicants respectfully traverse these rejections, and contend that these claims recite additional patentable subject matter not taught or suggested by Barak. Nevertheless, since Applicants' believe Claim 21 is currently in condition for allowance, Applicants will not here make arguments as to the independent patentability of each of the dependent claims in order to conserve client resources. Applicants reserve the right to make such arguments, if necessary, in the future.

Withdrawn Claims Should Be Returned to Consideration

Claims 2-4, 6, 8, 9, 11-15, 17-20 and 25-33 currently stand withdrawn from consideration as being directed to a nonelected invention. Each of these claims depends from independent Claim 21, which Applicants contend is now in condition for allowance. Since Claim 21 is allowable, Applicants respectfully request that the Examiner return these claims into consideration, as they are now in condition for allowance as well.

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No Disclaimers or Disavowals

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Conclusion

Applicants respectfully submit that the rejections and objections set forth in the outstanding Office Action are inapplicable to the present claims and specification. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

The undersigned has made a good faith effort to respond to all of the rejections and objections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicant's attorney in order to resolve such issue promptly.

Respectfully submitted,

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